



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

COPY

OCT - 2 2012

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

The Honorable Daniel J. Dwyer  
Mayor of Rensselaer  
City Hall  
62 Washington Street  
Rensselaer, NY 12144

Re: Consent Agreement and Final Order  
Matter of City of Rensselaer Municipal Separate Storm Sewer System  
Docket No. CWA-02-2012-3303

Dear Mayor Dwyer:

Enclosed please find the Consent Agreement and Final Order ("CA/FO") that settles the above-referenced enforcement action. Per Section V of the CA/FO, payment of the civil penalty is due within thirty days of your receipt of the CA/FO.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Saporita".

Christopher Saporita, Esq.

cc: Karen Maples  
Regional Hearing Clerk (w/original CA/FO and copy)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
290 Broadway  
New York, NY 10007-1866**

**IN THE MATTER OF:**

City of Rensselaer,  
New York

Respondent

Proceeding pursuant to Section  
309(g) of the Clean Water Act, 33  
U.S.C. §1319(g)

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**DOCKET NO. CWA-02-2012-3303**

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), and Respondent, City of Rensselaer ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

**I. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, 33 U.S.C. § 1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 CFR §22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18 (b)(2) and (3).
4. As set forth below, and pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), Complainant alleges that Respondent is liable for numerous violations of the Clean Water Act, in the operation of its municipal separate storm sewer system in the City of

Rensselaer, New York, which resulted, among other things, in the uncontrolled discharge of polluted stormwater into waters of the United States, in violation of Section 301 of the Act, 33 U.S.C. 1311, and is proposing to assess a civil penalty of seventeen thousand five hundred dollars (\$17,500).

5. Complainant and Respondent agree that settlement of this matter is in the public interest, and that entry of this Agreement and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law, will avoid prolonged and potentially complicated litigation between the parties.

6. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies Complainant's allegations of violations contained herein.

7. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Agreement, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

8. Upon incorporation into a Final Order by the EPA Regional Judicial Officer, this Agreement applies to, and is binding upon, Complainant, and upon Respondent and Respondent's officers, directors, agents, successors and assigns. Any change in ownership or corporate organization, structure, or status of Respondent including, but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, unless Complainant, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities. Respondent shall notify Complainant at the address specified below thirty (30) days prior to any such contemplated transfer.

9. This Agreement contains all settlement terms agreed to by the parties.

## **II. APPLICABLE LAW**

10. Section 301(a) of the Act prohibits the discharge of any pollutant by any person except in compliance with that section and with, inter alia, a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1311(a).

11. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. § 1362(12).

12. As relevant to this matter, "pollutant" means dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).

13. "Navigable waters" means the waters of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and, as relevant to this matter, "waters of the United States" include, "(a) [a]ll waters which are currently used, were used in the past, or may be susceptible to use in



interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) [a]ll interstate waters, including interstate "wetlands;" [and] (c) [a]ll other waters such as intrastate lakes, rivers, streams (including intermittent streams) . . . the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce..." 40 C.F.R. §122.2.

14. "Point source" means "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged," pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).

15. "Person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body, pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).

16. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that "... the Administrator [of the EPA] may, after opportunity for public hearing, issue a permit for the discharge of any pollutant ..." subject to appropriate conditions. Accordingly, any person who will discharge pollutants to waters of the United States must first obtain a National Pollutant Discharge Elimination System ("NPDES") permit.

17. To implement Section 402 of the Act, the EPA promulgated, inter alia, regulations to control the discharge of stormwater to waters of the United States from, inter alia, municipal separate storm sewer systems at 40 C.F.R. § 122.26.

18. Pursuant to 40 C.F.R. 122.26(b)(8), a "Municipal separate storm sewer" means a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law)...that discharges to waters of the United States; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2."

19. Pursuant to 40 C.F.R. 122.26(b)(16), a "small municipal separate storm sewer system" ("small MS4") means a municipal separate storm sewer that, inter alia, is not a "large" or "medium" municipal separate storm sewer system as defined in 40 C.F.R. 122.26(b)(4) and (b)(7).

20. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Administrator of the EPA has authorized the State of New York to administer the program for permitting discharges of pollutants to navigable waters, and the New York State Department of Environmental Conservation ("NYSDEC") is the state agency with the authority to administer the State's permitting program. Accordingly, any person who will discharge pollutants to waters of the United States within New York State must first obtain a State Pollutant Discharge Elimination System ("SPDES") permit from the NYSDEC, and must comply with all of its terms.

21. Pursuant to Section 309 of the CWA, 33 U.S.C. 1319, and 40 C.F.R. § 122.41(a), failure to comply with a NPDES [or SPDES] permit constitutes a violation of the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

### **III. CONCLUSIONS OF LAW AND JURISDICTIONAL FINDINGS**

22. The City of Rensselaer ("Respondent") is a municipal corporation chartered under the laws of the State of New York, and as such, is a "person," within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

23. Respondent owns and operates the municipal separate storm sewer system ("Facility"), located in the City of Rensselaer, Rensselaer County, New York and is therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

24. Respondent's Facility discharges stormwater containing pollutants, via outfall pipes, to the Quackenderry Creek, Mill Creek and an unnamed tributary to the Hudson River.

25. Quackenderry Creek, Mill Creek and the Hudson River are waters of the United States, within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

26. Respondent's Facility is a small MS4 within the meaning of 40 C.F.R. § 122.26(b)(8) and (16) and 40 C.F.R. § 122.32(a)(1), and is therefore subject to the applicable NPDES/SPDES permitting requirements.

27. Respondent submitted a Notice of Intent ("NOI") and a Storm Water Management Program ("SWMP") to NYSDEC on March 4, 2003, seeking coverage under the SPDES General Permit for Stormwater Discharges from MS4s, GP-02-02. Permit coverage was effective on March 25, 2003 (NYR20A125). Permit coverage was continued under the subsequent permit, GP-0-08-002 ("Permit"), which was effective from May 1, 2008 to April 30, 2010.

### **IV. FINDINGS OF FACT**

28. Inspectors from EPA and NYSDEC conducted a Compliance Evaluation Audit of the Facility on November 17-19, 2009. During the audit, EPA and NYSDEC inspectors observed the following violations of the Respondent's SPDES Permit:

- a. Respondent failed to provide adequate resources to fully implement its SWMP no later than January 8, 2008, and to make steady progress toward full implementation, in violation of Part IV.D of the Permit:
  - i. Respondent failed to create a widely accessible webpage as identified in the SWMP as an outreach technique; and
  - ii. Respondent failed to distribute stormwater regulations and guidelines with every building permit and site plan review as specified in the SWMP.

- b. Respondent failed to properly maintain numerous required records, including duplicate records of documents pertaining to the SWMP, for at least five (5) years after they are generated, in violation of Part V.B of the Permit.
- c. Respondent failed to timely submit annual reports for 2005, 2006, 2008 and 2009, in violation of Part V.C.1 of the Permit.
- d. Respondent failed to explain changes made to municipal operations selected, and the scheduled dates for planned Best Management Practices ("BMP") implementation in its Annual Reports for 2006-2009, in violation of Part V.C.3.f of the Permit.
- e. Respondent failed to develop and implement a public education and outreach program, in violation of Part VII.A.1 of the Permit:
  - i. Respondent failed to identify pollutants of concern ("POCs"), waterbodies of concern, geographic areas of concern and target audiences, in violation of Part VII.A.1.a of the Permit;
  - ii. Respondent failed to develop and implement an ongoing public education and outreach program, in violation of Part VII.A.1.b of the Permit; and
  - iii. Respondent failed to select appropriate education and outreach activities and measurable goals to ensure reduction of all POCs in stormwater discharges to the maximum extent practicable, in violation of Part VII.A.1.d of the Permit.
- f. Respondent failed to develop and implement a program to detect and address non-stormwater discharges that includes: procedures for identifying priority areas of concern for the IDDE program; a description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges; procedures for eliminating illicit discharges; and procedures for documenting actions, all in violation of Part VII.A.3.g of the Permit.
- g. Respondent failed to develop, implement and enforce a construction site stormwater runoff control program that meets the requirements in the Permit, in violation of Part VII.A.4 of the Permit:
  - i. Respondent failed to conduct construction site stormwater inspections, maintain and generate inspection reports in accordance with the its construction site stormwater program at the City's high school demolition project, and the Valley View and the Eastland Park construction sites, and thus failed to provide protection equivalent to that provided by SPDES permits GP-02-01 or GP-0-08-001, in violation of Part VII.A.4.a.i of the Permit;
  - ii. Respondent failed to ensure that the individual(s) performing the inspections are adequately trained and understand the State and local sediment and erosion control requirements, in violation of Part VII.A.4.a.ix of the Permit; and

- iii. Respondent failed to keep construction site inspection records for at least five (5) years after they are generated, in violation of Part V.B of the Permit.
- h. Respondent failed to develop and implement a Pollution Prevention/Good Housekeeping for Municipal Operations program that meets the requirements of the Permit, in violation of Part VII.A.6 of the Permit:
  - i. Respondent failed to develop and implement a pollution prevention/good housekeeping program that addresses municipal operations and facilities that contribute or potentially contribute POCs to the small MS4 system, in violation of Part VII.A.6.a.i of the Permit;
  - ii. Respondent failed to perform a self assessment of all municipal operations addressed by the SWMP to determine sources of pollutants and identify the municipal operations and facilities at a minimum frequency of once every three years, in violation of Part VII.A.6.a.ii of the Permit;
  - iii. Respondent failed to determine management practices, policies, procedures, etc. that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants such as spill response procedures, in violation of Part VII.A.6.a.iii of the Permit;
  - iv. Respondent failed to prioritize and address pollution prevention and good housekeeping efforts, in violation of Parts VII.A.6.a.iv and VII.A.6.a.v of the Permit;
  - v. Respondent failed to describe the management practices, policies and procedures that have been developed and report accurately the number of catch basins inspected and, where necessary, cleaned, in violation of Part VII.A.6.d.ii of the Permit.

29. On the basis of the Findings cited in Paragraphs 28(a) – (h) above, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311.

#### V. CIVIL PENALTY

30. Upon consideration of the factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), Respondent's efforts to come into compliance, and Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), Complainant has determined that a civil penalty of **TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00)** is appropriate to settle this matter.

31. Respondent consents to the issuance of this Agreement, and consents, for the purposes of settlement, to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the Supplemental Environmental Project described below.

32. Respondent shall pay the full penalty amount within thirty (30) calendar days of its receipt of

the Final Order issued by the EPA Regional Judicial Officer adopting this Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00a.m. Eastern Time to be considered received that day.

33. Payment shall be made by one of the following methods:

**By cashier's or certified check.** A cashier's or certified check, including the name and docket number of this case, for \$10,500.00, payable to "Treasurer, United States of America," mailed to:

Regular Mail

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Overnight Mail

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

**By Wire Transfer:** Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33

33 Liberty Street  
New York, NY 10045

Field lag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

**Online:** This option is available through the Department of Treasury, at [www.pay.gov](http://www.pay.gov). Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

34. Respondent shall send a copy of the check, or record of payment if made by other means, simultaneously with payment, to:

Christopher Saporita, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2



290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007

35. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1<sup>st</sup> late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.

36. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31<sup>st</sup> day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

37. Respondent shall not claim the penalty as a federal or other tax deduction or credit.

38. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

## VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

### SEP Performance

39. Beginning no later than thirty (30) days after receiving a copy of the Consent Agreement and Final Order, Respondent shall commence construction of the **Rensselaer City Library Green Infrastructure Enhancements Supplemental Environmental Project ("SEP")** (see Exhibit A).

40. Respondent shall complete construction of the SEP no later than July 31, 2013.

41. Respondent shall complete the SEP, as described in Exhibit A, as follows:

a. replace approximately 1,800 square feet of asphalt parking lot at the City of Rensselaer Library with a porous asphalt surface over a subsurface crushed stone infiltration bed that is wrapped in a geotextile fabric;

b. remove approximately 240 square feet of curbed asphalt at the corner of East Street

and Willow Street, and replace it with a rain garden; and

c. design and install a linear bio-retention strip, approximately 115 feet long and 3-5 feet wide, along East Street, just south of Willow Street.

42. The parties agree that the SEP is intended to secure significant environmental protection or public health improvements, namely the reduction of polluted stormwater discharges to waters of the United States.

43. Respondent shall spend no less than **THIRTY-EIGHT THOUSAND, TWO HUNDRED DOLLARS (\$38,200)**, in accordance with the specifications set forth in Exhibit A.

44. Respondent hereby certifies that, as of the date of this Agreement, Respondent is not required to perform or develop this SEP as part of any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

45. Public Statements. Any public statement, oral or written, in print, film, website or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action (USEPA Region 2 docket number CWA-02-2012-3303) taken by the U.S. Environmental Protection Agency for violations of Section 301 of the Clean Water Act."

### **SEP Completion Report**

46. Respondent shall submit a SEP Completion Report to EPA by September 1, 2013. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;
- c. Itemized costs;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

47. In itemizing its costs in the SEP completion report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods

and/or services for which payment has been made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

48. Respondent agrees that failure to submit a complete SEP Completion Report shall be deemed a violation of this Agreement, and Respondent shall become liable for stipulated penalties pursuant to paragraph 54 below.

49. Respondent shall submit the SEP Completion Report by first class mail, to:

Douglas McKenna, Chief  
Water Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20<sup>th</sup> floor  
New York, NY 10007

and

Christopher Saporita, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007

50. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

51. Respondent shall maintain legible copies of documentation of the underlying information for the SEP Completion Report, and shall provide said documentation to EPA not more than seven days after EPA requests such information.

52. In all documents or reports submitted to EPA pursuant to this Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

53. EPA Acceptance of SEP Report:

After receipt of the SEP Completion Report described in Paragraph 46 above, EPA will notify the Respondent, in writing, regarding:

- a. Any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- b. Indicate that EPA concludes that the project has been completed satisfactorily; or
- c. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 54, below.

If EPA elects to exercise option (a), above, (i.e., if the SEP Report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself), EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 54, below.

#### **Stipulated Penalties**

54. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraphs 39-45, above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 43 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(a) Except as provided in subparagraphs (i)-(iii), immediately below, where Respondent fails to timely and completely perform the SEP pursuant to this Agreement, Respondent shall pay a stipulated penalty to the United States in the amount of **TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500)**.

(i) If Respondent completes the SEP in accordance with Paragraph 41, but spends less than 75 percent of the amount of money required to be spent (\$28,650), Respondent shall pay a stipulated penalty to the United States of **EIGHT THOUSAND DOLLARS (\$8,000)**.

(ii) If Respondent completes the SEP in accordance with Paragraph 41, and spends at least 90 percent of the money required to be spent for the project (\$34,380), Respondent shall not be liable for any stipulated penalty.

(iii) If Respondent does not complete the SEP in accordance with Paragraph 41, but the Complainant determines that Respondent made good faith and timely efforts to do so, and Respondent certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent (\$34,380)



was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(b) If Respondent fails to submit the SEP Completion Report required by Paragraph 46 above, Respondent shall pay a stipulated penalty of \$100.00 per day from the day the report was originally due until the day the report is submitted.

(c) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of EPA.

(d) Stipulated penalties shall begin to accrue on the day after performance of the SEP or the day after the due date of the SEP Completion Report, whichever is applicable, and shall continue to accrue through the final day of the completion of the SEP or submission of the report.

(e) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 33 and 34 above. Interest and late charges shall be paid as stated in Paragraphs 35 and 36 herein.

(f) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

## **VII. OTHER TERMS AND CONDITIONS**

55. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.

56. Nothing in this Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of the Agreement.

57. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind that party to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.

58. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.

59. If comments received during the public comment period do not require modification or

withdrawal by EPA from this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer ten (10) days after closure of the public comment period, with a request that it be incorporated into a final order.

60. This Agreement, upon incorporation into a final order by the Regional Judicial Officer, and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Agreement.


61. This Agreement resolves Respondent's liability for federal civil or administrative penalties under Sections 309(d) and 309(g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for the violations alleged in this Agreement. This Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

62. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

63. Respondent consents to service upon it by delivery of a copy of this Agreement by an EPA employee other than the Regional Hearing Clerk.

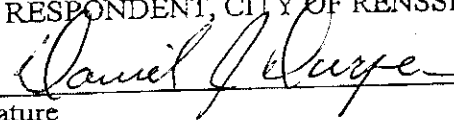
FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION 2:

  
DORE LAPOSTA

 Director, Division of Enforcement and Compliance Assistance  
United States Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007

8/16/12  
Date

FOR RESPONDENT, CITY OF RENSSELAER:

  
Signature

DANIEL J. DWYER  
Print name

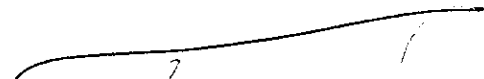
Mayor  
Title

Aug 15, 2012  
Date

### FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the following Combined Complaint and Consent Agreement ("Agreement"), resolving the above matter, is hereby approved and incorporated by reference into this Final Order. Respondent is hereby **ORDERED** to comply with all of the terms of the Agreement, effective immediately upon receipt by Respondent of this Agreement and Final Order.

SO ORDERED THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2012.

  
\_\_\_\_\_  
DORE LAPOSTA  
Director, Division of Enforcement and Compliance Assistance  
United States Environmental Protection Agency, Region 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF

City of Rensselaer MS4  
62 Washington Street  
Rensselaer, NY 12144

Respondent

Proceeding Pursuant to §309(g) of the  
Clean Water Act, 33 U.S.C. §1319(g).

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No. CWA-02-2012-3303

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

The Honorable Daniel J. Dwyer  
Mayor of Rensselaer  
City Hall  
62 Washington Street  
Rensselaer, NY 12144

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> floor  
New York, New York 10007-1866

OCTOBER 2, 2012  
Date

  
Signature

CHRISTOPHER SAPORITA  
Print Name

ASSISTANT REGIONAL COUNSEL  
Title

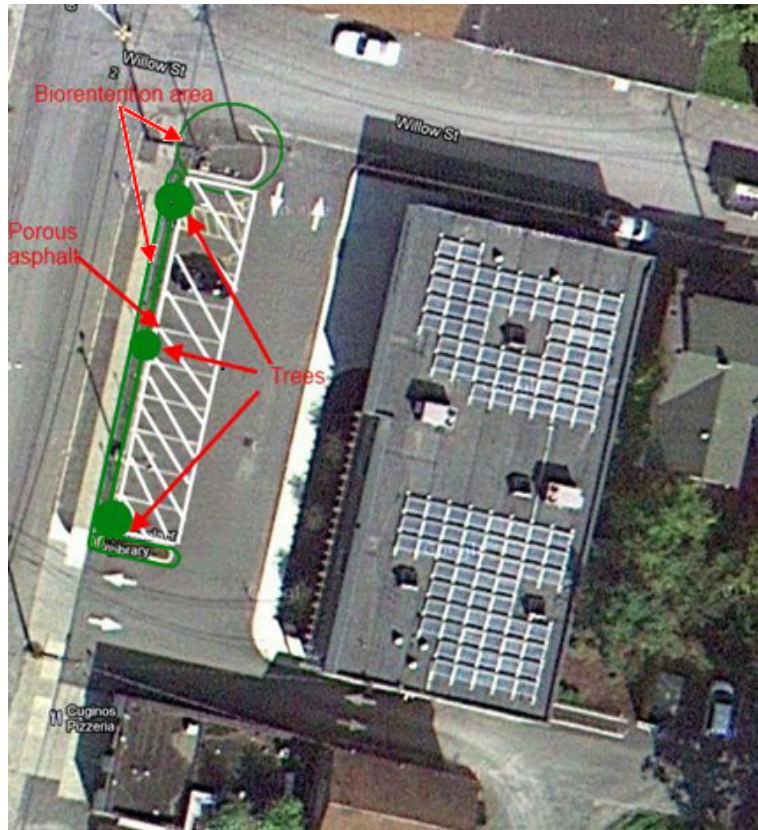


**Proposed Supplemental Environmental Project  
Rensselaer City Library Green Infrastructure Enhancements**

**Detailed Description of the Project**

The proposed project consists of the introduction of a number of green infrastructure practices at the location on the City of Rensselaer Library. Specifically, the project will include the following, as illustrated below:

1. Replacement of approximately 1,800 square feet of asphalt parking lot with a porous asphalt surface over a subsurface crushed stone infiltration bed which is wrapped in a geotextile fabric.
2. Removal and replacement of approximately 240 square feet of curbed asphalt at the corner of East Street and Willow Street with a rain garden.
3. Design and installation of a linear bio-retention strip along East Street of approximately 115 feet long and 3-5 feet wide to include three to five street trees. This will replace a compacted and weed-covered strip of soil.



Final design of these elements, including required soil amendments, underdrains, several storm accommodations, is dependent on the results of infiltration testing and stormwater calculations.

**Estimated Cost of Project**

Infiltration testing:	\$1,500
Design and Engineering:	\$3,700
Construction:	\$33,000
Total Cost:	\$38,200

## **Estimated Savings or Profit**

None

## **Anticipated Environmental and Ecological Benefits**

This project will remove untreated stormwater, potentially carrying with it petroleum and other pollutants typical of urban run-off, from the City's storm sewer system. By keeping the untreated stormwater from entering the storm system, the pollutants will be prevented from being discharged into the Hudson River and thus reduce surface water contamination.

In total, this project will replace approximately 2,440 square feet of impervious surface with pervious surfaces and increase the underlaying storage volume. The project has the design potential to handle approximately 1,030 cubic feet of stormwater. This represents more than sufficient storage capacity to capture and treat stormwater from a 90% storm event that falls directly onto the porous surfaces as well the adjacent sidewalk and the non-porous portion of the parking lot. Calculations are presented in a table at the end of this document.

## **Relationship to the Violation(s)**

This project has a direct relationship to the violations, which were all related to the Clean Water Act concerning the discharge of pollutants to a navigable water of the United States (ie the Hudson River). The proposed project is intended to remove untreated stormwater that falls onto Rensselaer City Library property from entering the City's storm sewer system, and ultimately the Hudson River.

## **Coordination with Third Parties**

The City will contract with an engineering firm to prepare detailed design documents. City labor will be used for all construction with the exception of the porous pavement. Due to the technical nature of installing porous pavement, this aspect of the project will be put out to bid.

Project management and construction oversight will also be provided under contract by an engineering firm with expertise in Green Infrastructure practices.

## **Project Milestones and Schedule for Implementation**

Infiltration testing	June 2012
Design and engineering	June-August 2012
Construction	March-July 2013*

*\*construction could begin as early as August 2012, depending on final design/construction plans*

## **Length of Time the Proposed SEP is Expected to be Used**

Porous asphalt has an expected service life of at least 20 years. The bio-retention areas are expected to remain in service indefinitely given proper maintenance and care.

## Stormwater Calculations

### Water Quality Volume:

$$WQv = (P) (Rv) (Ap) / 12$$

where:

$$P = 90\% \text{ rainfall number} = 0.90$$

$$Rv = 0.05 + 0.009(100) = 0.95$$

$$Ap = \text{Area Draining to Practice} = 2,440 \text{ sf porous surfaces} + 3,850 \text{ sf adjacent paved (non-porous) surfaces} = 6,290 \text{ sf}$$

$$WQv = 448 \text{ cubic feet}$$

### Storage Capacity:

#### A. Porous asphalt

$$\text{Storage Volume} = Ap * n * dt$$

where:

$$Ap = \text{Area of Practice} = 1,800 \text{ sf}$$

$$n = \text{assumed porosity} = 0.4$$

$$dt = \text{gravel bed/reservoir depth} = 1 \text{ ft}$$

$$\text{Storage Volume} = 720 \text{ cubic feet}$$

#### B. Bio-retention area

$$\text{Volume of soil media: } Vsm = Arg * Dsm * Psm$$

$$\text{Volume of drainage layer: } Vdl = Arg * Ddl * Pdl$$

where:

$$Arg = \text{proposed bioretention surface area} = 640 \text{ sf}$$

$$Dsm = \text{depth soil media} = 1.5 \text{ ft}$$

$$Ddl = \text{depth drainage layer} = 6 \text{ inches} = 0.5 \text{ ft}$$

$$Psm = \text{assumed porosity of soil media} = 0.2$$

$$Pdl = \text{assumed porosity of drainage layer} = 0.4$$

$$Vsm = 192 \text{ cubic feet}$$

$$Vdl = 128 \text{ cubic feet}$$

$$\text{Total storage volume} = Vsm + Vdl = 320 \text{ cubic feet}$$

#### C. Total Storage Capacity of Green Infrastructure Practices

$$\text{Porous asphalt storage volume} = 720 \text{ cf}$$

$$\text{Bio-retention area storage volume} = 320 \text{ cf}$$

$$\text{Total storage volume} = 1,050 \text{ cf}$$

*Storage volume (1,050 cubic feet) is greater than required for the 90th percentile storm event (720 cubic feet).*

*Furthermore, the storage volume calculations do not take into account the greater depth of soil media, and thus enhanced storage volume, of tree wells.*